

SERVICE DATE – JUNE 8, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Ex Parte No. 661

RAIL FUEL SURCHARGES

MOTION FOR PROTECTIVE ORDER

Decided: June 7, 2006

By motion filed on June 5, 2006, Union Pacific Railroad Company (UP) seeks a protective order under 49 CFR 1104.14 to protect confidential contract terms that UP includes in support of its reply¹ to the statement of Arkansas Electric Cooperative Corporation (AECC) filed on May 15, 2006.

Good cause exists to grant the motion for protective order. UP submits that a protective order is necessary to enable it to respond to claims by AECC that the White Bluffs and Independence power plants are being overcharged (or will be overcharged when the contract expires) for fuel recovery for movement of Powder River Basin coal by UP to those plants.

The motion conforms with the Board's rules at 49 CFR 1104.14 governing protective orders to maintain the confidentiality of materials submitted to the Board. Issuance of the protective order will ensure that confidential information will be used solely for this proceeding and not for other purposes. Accordingly, the motion for protective order will be granted substantially in the form submitted by UP and the Agreement shall be subject to the Protective Order and Undertakings contained in the Appendix to this decision.²

It is ordered:

1. The motion for a protective order is granted, and the Protective Order and Undertaking in the Appendix to this decision are adopted.
2. The unredacted Agreement submitted in STB Ex Parte No. 661 will be kept under seal by the Board and not placed in the public docket or otherwise disclosed to the public, unless the attached Undertaking is executed and the terms of the Protective Order are followed, or unless otherwise ordered by the Board.

¹ UP filed a confidential version of its reply and a public redacted version concurrently with this motion on June 5, 2006.

² A proposed protective order and undertaking were included with the motion.

3. This decision is effective on the service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

APPENDIX

PROTECTIVE ORDER

1. For the purposes of this Protective Order, “confidential information” means the provisions of the UPC-37743, Coal Transportation Agreement between Union Pacific Railroad Company (“UP”) and Entergy Arkansas, Inc. and Entergy Services, Inc. (collectively “Entergy”).
2. The confidential information shall be used for the purpose of this and any related Board proceedings, or any judicial review proceeding arising therefrom, and not for any other business, commercial, or other competitive purpose.
3. The confidential information shall not be disclosed in any way or to any person without the written consent of UP and Entergy or any order of the Board. Such disclosure shall be limited to outside counsel or consultants of parties to these proceedings, solely for use in connection with this and any related Board proceedings, or any judicial review proceeding arising therefrom. Before such disclosure, such outside counsel or consultant must be given and read a copy of this Protective Order and agree to be bound by its terms by signing the attached Undertaking prior to receiving access to the confidential information.
4. Any documents containing the confidential information in the possession of parties other than UP and Entergy, and their respective counsel, must be destroyed, and notices of such destruction must be served on the Board at the completion of this and any related Board proceedings, or any judicial review proceeding arising therefrom, whichever comes first.
5. If the confidential information is retained by the Board, it shall, in order to be kept confidential, be treated in accordance with the procedure set forth at 49 CFR 1104.14.
6. All parties must file simultaneously a public version of any confidential submission filed with the Board.
7. If any party intends to use the confidential information at hearings in this proceeding or in any related Board proceedings, or in any judicial review proceeding arising therefrom, the party shall submit any documents setting forth or revealing such confidential information to the Board, or the reviewing court as appropriate, under seal, and shall accompany such submission with a written request to the Board or the court to (i) restrict attendance at the hearing during discussion of such confidential information, and (ii) restrict access to the portion of the record or

briefs reflecting discussion of such confidential information in accordance with this Protective Order.

8. All parties must comply with all the provisions stated in this Protective Order unless good cause, as determined by the Board, is shown by any party to warrant suspension of any of the provisions herein.

Exhibit A

UNDERTAKING – CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order governing the filing of confidential information by UP in STB Ex Parte No. 661 and understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any data or information obtained under this Undertaking, or to use or permit the use of any information learned as a result of receiving such information, for any purpose other than the preparation and preservation of evidence and argument in STB Ex Parte No. 661 or any judicial review proceedings taken or filed in connection therewith. I further agree not to disclose any information obtained under this Protective Order to any person who is not also bound by the terms of this order and who has not executed an Undertaking in the form hereof.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that UP and Entergy shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Signed: _____

Affiliation: _____

Dated: _____